

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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*C.M. No. 7684-C of 2014 and
RSA No. 4871 of 2011*

Date of decision: 17.11.2015

Raje and others

....APPELLANTS

VERSUS

Heera Lal and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Chanderhas Yadav, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division), Jhajjar dated 22.09.2009, by which the suit for permanent injunction filed by the respondents-plaintiffs claiming their ownership and possession over the suit land to the extent of their share has been decreed, appeal against which preferred by the appellants-defendants dismissed by the District Judge, Jhajjar on 27.07.2011.

2. It is the contention of the learned counsel for the appellants that the suit for permanent injunction against the co-sharer is not maintainable as it is an admitted fact that the respondents-plaintiffs are claiming themselves to be the co-sharers in the property and thus, decreeing of the suit by the Courts below is not sustainable. His further contention is that the

possession over the suit land has not been proved by the respondents-plaintiffs and the possession, if any, exceeds their share and thus, the decree could not have been passed.

3. I have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the impugned judgments but cannot accept what has been asserted by the counsel.

4. As regards the first question with regard to the possession of the property in question, which is the subject matter of dispute, suffice it to say that the documentary evidence, which has been placed on record, i.e. Jamabandi Ex. P7 clearly establishes the ownership and possession of the predecessor-in-interest of the respondents-plaintiffs, namely, Rattan Singh, according to which, 1 Kanal and 6 Marlas of land was in possession of Rattan Singh, which is the subject matter of the dispute. Mutation Ex. P8 also establishes the said fact. No evidence has been led to rebut this presumption of truth attached with the revenue records. As regards the oral evidence is concerned, PW1 Devender Singh has supported his case and nothing has been extracted in the cross-examination, which would dent his veracity. PW2 Shiv Narain as also PW3 Heera Lal-plaintiffs have also supported the case, as has been pleaded. PW2 Shiv Narain has detailed each and every aspect as to how the respondents-plaintiffs came into possession of the plot in question, which measures 1 Kanal and 6 Marlas. Even the report of the Local Commissioner and the site plan prepared by him tallies with the site plan, as has been produced by the plaintiffs along with the suit. The evidence, which has been produced by the plaintiffs, proves beyond doubt that they are in possession of the property in dispute.

Once the possession of a co-sharer is established on a specified area, the suit

for permanent injunction would be maintainable and, therefore, the Courts have rightly proceeded to grant them the said relief.

5. As regards the contention of the learned counsel for the appellants that the respondents-plaintiffs are in possession of the land more than their share in the property is concerned, the same deserve rejection as it is contrary to the first argument that they were not in possession of any part of the property. Further, no evidence has been brought on record which would indicate or prove that they are in possession of the property exceeding their share. In the absence of such an evidence, the argument of the learned counsel for the appellants cannot be accepted.

6. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

7. In view of the above, finding no merit in the present appeal, the same stands dismissed.

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In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

November 17, 2015

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**